

February 25, 2019

Mr. Nick Wilson
MK Consulting Engineers, LLC
Whitehall Mill
3300 Clipper Mill Rd. # 201
Baltimore MD 21211

Re: Northeast Area Elementary School 2 Rosedale MD 21237
Forest Conservation Variance
Tracking # 06-18-2849

Dear Mr. Wilson:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the request for a variance to Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation for the above referenced project. This request proposes to remove 8 specimen trees for the purpose of constructing an elementary school and the related infrastructure. These trees include 6 *Quercus alba* from 30 to 35-inches diameter at breast height (DBH) in fair to good condition, a 35-inch DBH *Liriodendron tulipifera* in very poor condition, and a 32-inch DBH *Acer rubrum* that is in very poor condition. A 37.5-inch DBH *Quercus alba* is to be retained. All trees are located within forest outside of required forest buffers. The applicant has removed proposed trails from within the proposed forest retention areas from this request. The majority of forest on the property is of moderate priority due to the location of forest buffers, but most of the forest exhibits poor structure. The applicant proposes to retain forest on-site as close to the forest conservation threshold as possible.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of beneficial use of his property. Development of the site for use as a school could not occur without removal of the specimen trees and thus would deprive the petitioner of beneficial use of the property. Therefore, we find that this criterion has been met.

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The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The property is almost entirely forested and the proposed development of a school on this property requires clearing of most of the forest. Because of the location of the specimen trees within the forest, removal of the trees cannot be avoided for the construction of a school and the supporting infrastructure. This represents unique circumstances associated with the subject project rather than general conditions in the neighborhood. Therefore, the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The petitioner proposes construction of a school on a site that is almost completely forested. The property is surrounded by single family residential development, but is within 200-feet of church properties to the east. The proposal to remove 8 specimen trees is part of a proposed development that will result in an extension of the institutional uses westward. While forest areas are proposed for retention similar to retention areas on nearby properties, this development will alter the essential character of the neighborhood. Therefore, the third criterion is not met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen trees to be removed are all located outside of required forest buffers, but the school and infrastructure development proposed will result in impacts to forest buffers and non-tidal wetlands. Impacts have been minimized to the extent possible when considering site constraints and the requirements for construction of a school campus. Mitigation will be provided for the wetland and forest buffer impacts with fee-in-lieu payments to allow for water quality mitigation off-site. Also, all sediment and erosion control and stormwater management requirements must be met. In addition, the development must meet all forest conservation requirements, including mitigation for specimen trees removed. Therefore, with the proposed water quality improvements and mitigation, granting of the special variance will not adversely affect water quality, and this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions on the property that have resulted in the need for this variance request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The applicant has minimized forest and tree impacts to the extent possible when considering the site constraints and the siting requirements for an elementary school campus. Also, the applicant proposes to retain forest on-site as close to the forest conservation threshold as possible. The specimen trees to be

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impacted must be mitigated by meeting all forest conservation requirements. Therefore, this criterion is met.

Based on our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. Add the following note to all plans for this project:

“A forest conservation special variance was approved by the Baltimore County Department of Environmental Protection and Sustainability to allow the removal of eight specimen trees. Mitigation was accomplished by meeting all forest conservation requirements. If any specimen tree shown on the plan “to remain” is proposed to be removed, special variance approval or written authorization must first be obtained from the Department of Environmental Protection & Sustainability.”

2. A Forest Conservation Plan for this project must be approved prior to any permit approvals.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner sign the statement at the end of this letter, and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Acting Director

DVL/pad

c: Marian Honeczy MDDNR
Kevin Haines, Holly Oak Consulting LLC

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I/we agree to the above conditions to bring the referenced property into compliance with Baltimore County's Forest Conservation Regulations.

Signature of Baltimore County Public Schools Representative	Printed Name	Date
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